Remarks

Claims 1–27 are pending in this application. Claims 1, 7, 11, 14, 17, 20, 22, and 25 have been amended to make editorial changes. The amended claims are fully supported by the specification. No new matter has been added.

Allowable Claim 27

Claim 27 was not specifically rejected by the examiner and therefore should be in a form for allowance.

Section 103 Rejection

Claims 1–26 have been rejected under section 103 as being unpatentable over U.S. patent 6,453,345 (Treka) and further in view of U.S. patent 5,771,355 (Kuzma). Reconsideration of the rejection and allowance of the claims are respectfully requested.

No Suggestion to Combine Treka and Kuzma

There is *no suggestion or motivation*, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, *to combine the cited references.* The combination is improper because neither reference suggests a modification of nor an improvement to what is described in the other reference.

Treka. Treka describes a technique of network security and surveillance by recording low-level data. See abstract and summary of the invention. In particular, Treka archives packets at the data link layer, which is layer 2 of the Open System Interconnection (OSI) model. Column 2, lines 23–28; column 6, lines 13–16. Treka archives all data-link-level traffic received and does not discuss any packets that should not be archived. Column 2, lines 34–48.

Kuzma. Kuzma describes a technique for transmitting e-mail in such a way to minimize costs, which is a very different subject matter from Treka. See abstract and summary of the invention. Further, in contrast to Treka, e-mail is handled in layer 7, the application layer of the OSI model, which one of skill in the art would recognize is very different from layer 2 where Treka operates.

At column 6, lines 25–28, Kuzma discusses an attachment reference, which is a pointer or path to another location where an attachment resides. In other words, the attachment is not

included to the e-mail, but rather the e-mail has a reference or link to the attachment. This discussion should not be combined with Treka.

Treka is concerned with the security and surveillance of traffic on a computer network and low-level archival of the raw network packets. These packets are the packets that are actually received at the computer network. There is no discussion in Treka about checking references to attachments at locations outside the network (especially when that reference is specified in OSI layer 7).

Therefore, *there is no motivation to combine these references*, especially in the way the examiner suggest. For at least this reason, the claims should be allowable.

Combination Falls Short

Even if Treka and Kuzma were combined, and there is no suggestion to do this for the reasons stated above, the *combination would still fall short* of the invention as recited in the claims.

The combination of Treka and Kuzma is a technique for data-link-layer traffic archival where some e-mail received may have references to attachments at locations outside the network. The claims should be allowable because the combination does not show or suggest each and every limitation of the claims.

Claim 1

For example, claim 1 recites "*examining file headers in said packets to determine the presence of specific identifying indicia* therein" and "*recording the Internet Protocol header source address for each of the packets containing said specific identifying indicia.*" Treka and Kuzma, considered separately or in combination, do not show or suggest these features of the invention.

Nowhere do the references show or suggest examining file headers in the packets to determine the presence of specific identifying indicia. The examiner admitted this feature is not in Treka. Kuzma also does not have this. As was discussed, Kuzma operates in OSI layer 7 and does not see *packets* or file headers in the *packets*, which are at a lower layer of the OSI model. Therefore, for at least this reason, claim 1 should be allowable.

Further, Treka archives *all* data-link-layer traffic. This is unlike the invention which *records the IP header source address for each packet containing the specific identifying indicia.*

In fact, Treka anticipated extremely large (e.g., humungous, gargantuan, or enormous) volume of data would be archived using the Treka technique and discusses using high-capacity storage units, such as high-capacity tape drives. Column 9, lines 48–51. The present invention is very different because information is selectively recorded. Using the technique of the invention, the amount of data that will be recorded—the source address—ought not to be as voluminous as in Treka. This specific feature of the invention not shown or suggested by the prior art.

The present invention provides further benefits and features not found in the prior art. With the invention, by tracking where digital files were sent (or received), authors can determine whom to contact in order to secure compensation for use of their works (which are embodied in the digital files). Page 2, lines 19–23. Therefore, this invention will help protect the intellectual property rights of authors including artists, musicians, and other creative professionals. For example, by being able to track where their works were sent or received, authors (such as a songwriter or music artist) may be able to seek royalties for unauthorized playing, exhibition or distribution of their works.

Therefore, claim 1 should be allowable. Claims 2–6 are dependent on claim 1 and should be allowable for at least similar reasons discussed for as claim 1. Additionally, these dependent claims recite additional limitations which further distinguish the invention over the prior art.

Other Claims

Claims 7, 10, 11, 14, 17, 20, and 22 should also be allowable over the prior art for at least one of the reasons discussed above.

Claims 8–9, 12–13, 15–16, 18–19, 21, 23–26 are dependent claims and should be allowable for at least similar reasons as the independent claims from which they depend. Additionally, these dependent claims recite additional limitations which further distinguish the invention over the prior art.

Conclusion

For the above reasons, applicant believes all claims now pending in this application are in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the examiner believes a telephone conference would expedite prosecution of this application, please contact the signee.

Respectfully submitted,

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